

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of February, two thousand eleven.

PRESENT:

JOSÉ A. CABRANES,
BARRINGTON D. PARKER,
RICHARD C. WESLEY,
Circuit Judges.

KONG FA WANG,
Petitioner,

v.

ERIC H. HOLDER, JR., UNITED STATES
ATTORNEY GENERAL
Respondent.

10-1297-ag
NAC

FOR PETITIONER: Corey Lee, New York, New York.

FOR RESPONDENT: Tony West, Assistant Attorney General;
Jennifer L. Lightbody, Assistant
Director; Nicole J. Thomas-Dorris, Trial
Attorney, Office of Immigration
Litigation, Civil Division, United States
Department of Justice, Washington, D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Kong Fa Wang, a native and citizen of China,
6 seeks review of a March 11, 2010, decision of the BIA
7 affirming the May 15, 2008, decision of Immigration Judge
8 ("IJ") Noel A. Brennan denying Wang's application for
9 asylum, withholding of removal, and relief under the
10 Convention Against Torture ("CAT"). *In re Kong Fa Wang*, No.
11 A093 389 915 (B.I.A. Mar. 11, 2010), *aff'g* No. A093 389 915
12 (Immig. Ct. N.Y. City May 15, 2008). We assume the parties'
13 familiarity with the underlying facts and procedural history
14 in this case.

15 Under the circumstances of this case, we review the
16 decision of the IJ as supplemented by the BIA. *See Yan Chen*
17 *v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). The
18 applicable standards of review are well-established. *See*
19 8 U.S.C. § 1252(b)(4)(B); *Yanqin Weng v. Holder*, 562 F.3d
20 510, 513 (2d Cir. 2009).

21 Contrary to Wang's arguments, the agency did not err in
22 finding that Wang failed to establish past persecution. The

1 agency reasonably considered the context of his beating at
2 the hands of the Chinese authorities and found that the
3 mistreatment he suffered was not sufficiently severe to
4 constitute persecution because, while he suffered minor
5 injuries, he was never subjected to any arrest, detention or
6 other injury since the incident. *Cf. Beskovic v. Gonzales*,
7 467 F.3d 223, 226 (2d Cir. 2006) (explaining that a "'minor
8 beating' . . . may rise to the level of persecution if it
9 occurred in the context of an arrest or detention"). The
10 threat of sterilization and the emotional harm he suffered
11 due to his wife's forced abortion do not establish past
12 persecution. *Gui Ci Pan v. U.S. Att'y Gen.*, 449 F.3d 408,
13 412 (2d Cir. 2006) (providing that claims based on
14 unfulfilled threats do not establish persecution); *Shi Liang*
15 *Lin v. U.S. Dep't of Justice*, 494 F.3d 296, 309 (2d Cir.
16 2007) (*en banc*) (noting that the profound emotional loss an
17 individual may suffer following a spouse's forced abortion
18 does not constitute persecution).

19 Additionally, substantial evidence supports the
20 agency's conclusion that Wang did not establish a
21 well-founded fear of future persecution. The agency
22 reasonably found that Wang did not establish an objectively

1 reasonable fear of persecution based on his altercation with
2 the police because the Chinese authorities did not seek to
3 punish him for that resistance during the nearly five years
4 he lived in China following that incident. The agency also
5 reasonably determined that Wang did not have an objectively
6 reasonable fear that he would be sterilized based on his
7 desire to have more children if he returns to China; the
8 record does not support Wang's assertion that he would be
9 subjected to forced sterilization. *See Jian Xing Huang v.*
10 *INS*, 421 F.3d 125, 129 (2d Cir. 2005) (per curiam) (holding
11 that, absent solid support in the record for the
12 petitioner's assertion that he would be subjected to
13 persecution in China because of his desire to have more
14 children, his fear was "speculative at best").

15 Accordingly, because Wang did not establish past
16 persecution or a well-founded fear of future persecution,
17 the agency did not err in denying his claim for asylum. *See*
18 *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004)
19 (explaining that to establish eligibility for asylum, an
20 applicant must demonstrate past persecution or a well-
21 founded fear of future persecution); *Jian Xing Huang*, 421
22 F.3d at 129. Because Wang's claims for withholding of

1 removal and CAT relief were based on the same factual
2 predicate as his claim for asylum, the BIA did not err in
3 denying those forms of relief. *See Paul v. Gonzales*, 444
4 F.3d 148, 156 (2d Cir. 2006).

5 For the foregoing reasons, the petition for review is
6 DENIED. As we have completed our review, any stay of
7 removal that the Court previously granted in this petition
8 is VACATED, and any pending motion for a stay of removal in
9 this petition is DISMISSED as moot. Any pending request for
10 oral argument in this petition is DENIED in accordance with
11 Federal Rule of Appellate Procedure 34(a)(2), and Second
12 Circuit Local Rule 34.1(b).

13 FOR THE COURT:
14 Catherine O'Hagan Wolfe, Clerk
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